

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANDREW ALEXANDER BROWN, II,

Petitioner,

v.

CASE NO. 19-3251-SAC

STATE OF KANSAS,

Respondent.

ORDER

This matter is a *pro se* petition for writ of habeas corpus filed under 28 U.S.C. § 2254. This matter is before the Court on Respondent's Motion to Dismiss (Doc. 18). For the reasons set forth in the motion, the Court dismisses this matter without prejudice.

The motion to dismiss sets forth the procedural history of this case. It shows that on July 6, 2020, Petitioner filed a state habeas action in the district court of Wabaunsee County, Kansas. The state habeas action is pending.

A state prisoner must exhaust all available state-court remedies before pursuing federal habeas relief unless it appears there is an absence of available state corrective process or circumstances exist that render such process ineffective to protect the petitioner's rights. *See* 28 U.S.C. § 2254(b)(1); *see also Bland v. Sirmons*, 459 F.3d 999, 1011 (10th Cir. 2006) ("A state prisoner generally must exhaust available state-court remedies before a federal court can consider a habeas corpus petition."); *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000) (exhaustion of state court remedies is required by prisoner seeking habeas corpus relief).

Petitioner has failed to respond to the motion to dismiss and has failed to exhaust his state court remedies. Mailings from the Court to Petitioner have been returned as undeliverable, noting

that Petitioner is no longer in custody. (Docs. 20, 21.) The Court's Local Rules provide that "[e]ach attorney or pro se party must notify the clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record of an attorney or pro se party is sufficient notice." D. Kan. Rule 5.1(c)(3).

The Court grants the motion to dismiss and dismisses this matter without prejudice to refiling after the exhaustion of state court remedies.

IT IS THEREFORE ORDERED THAT Respondent's Motion to Dismiss (Doc. 18) is **granted.**

IT IS FURTHER ORDERED that this matter is **dismissed without prejudice.**

IT IS FURTHER ORDERED that no certificate of appealability will issue.

IT IS SO ORDERED.

Dated November 12, 2021, in Topeka, Kansas.

s/ Sam A. Crow
Sam A. Crow
U.S. Senior District Judge